



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/693,519	10/27/2003	Shelly John Mechery	2343-173-27	2226

24510 7590 09/11/2006

DLA PIPER RUDNICK GRAY CARY US LLP
ATTN: PATENT GROUP
1200 NINETEENTH STREET, NW
WASHINGTON, DC 20036

EXAMINER

STAHL, MICHAEL J

ART UNIT PAPER NUMBER

2874

DATE MAILED: 09/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/693,519

Applicant(s)

MECHERY ET AL.

Examiner

Mike Stahl

Art Unit

2874

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-11, 13, 15-20, 24-28, 31-34, 41, 42 and 44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2-11, 16-20, 31-34, 41 and 44 is/are allowed.
- 6) ☒ Claim(s) 24 and 25 is/are rejected.
- 7) ☒ Claim(s) 13, 15, 26-28 and 42 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 24-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 24 is indefinite because it depends from a canceled claim (claim 23).

Claim 25 is indefinite by dependence from claim 24.

It is believed that claim 24 should be canceled. Although claim 24 could be amended to depend from claim 16, it would not substantially further limit that claim (claim 16 as amended already specifies that the sensing element is in the form of a film; and a reflective arrangement is implicit in claim 16 as well). Claim 25 may also be canceled, although technically there would be no problem if it were amended to depend from claim 16 directly.

Claim Objections

Claims 13, 15, 26, 27, 28, and 42 are objected to as explained below:

Claims 13 and 15 are objected to because they appear to conflict with parent claim 16 as amended. Claim 16 now recites that the sensing element is in the form of a film. However, claims 13 and 15 specify other shapes for the sensing element (cylindrical solid body or disc respectively) which are inconsistent with a film shape. The original disclosure appears to have construed these as three distinct shapes (note original claims 13, 14, and 15). Therefore cancellation of claims 13 and 15 is suggested. Alternatively, if applicant can explain how the

Art Unit: 2874

original disclosure supports construing a cylindrical solid body shape or a disc shape as further limiting a film shape, this objection may be voided.

Claim 26 is objected to because it similarly appears to be in conflict with parent claim 16 as amended. It is not apparent how a three-dimensional elongate solid body having proximal and distal ends can further limit a film shape. Clarification or cancellation is required.

Claim 27 is objected by dependence from claim 26, and is further objected to because it recites a structural arrangement which is not consistent with amended parent claim 16. Claim 16 now recites that the ends of the transmitting and receiving fibers adjacent the sensing element are bundled into a cable having a planar cable end adjacent the sensing element (essentially incorporating the limitations from original claim 29). Claim 27 recites that the proximal end of the sensing element is adjacent ends of the one or more transmitting fibers and that the distal end of the sensing element is adjacent ends of the one or more receiving fibers. In other words, claim 16 calls for the ends of the transmitting fibers and the ends of the receiving fibers to be on the same side of the sensing element, whereas claim 27 requires them to be on opposite sides of the sensing element. Claims 16 and 27 are directed to distinct and mutually exclusive embodiments (see e.g. figs. 2C and 2D, respectively). Accordingly cancellation of claim 27 is suggested.

Claim 28 is objected to on the same basis as claim 13 set forth above. It is further objected to because it essentially recites the same thing as claim 13. Therefore cancellation of claim 28 is suggested.

Claim 42 is objected to because it appears to be inconsistent with the original disclosure and with parent claim 41 as amended. Claim 41 sets forth a Brewster angle type of reflective arrangement, an example of which is shown in fig. 2C and described at p. 10 of the specification.

Art Unit: 2874

Claim 42 further recites a mirror which is adjacent to the sensing element. However, the specification plainly states that a mirror is not needed with a Brewster angle arrangement (p. 10 lns. 15-16). Therefore cancellation of claim 42 is recommended.

Allowable Subject Matter

Claims 2-11, 16-20, 31-34, 41, and 44 are allowed since claims 16 and 41 were amended to place previously indicated allowable subject matter into independent form and all other claims depend from claims 16 or 41 respectively.

Conclusion

Applicant's amendment necessitated the new ground of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Art Unit: 2874

Inquiries about this letter should be directed to Mike Stahl at 571-272-2360. Inquiries of a general or clerical nature (e.g., a request for a missing form or paper, etc.) should be directed to the technical support staff supervisor at 571-272-1626. Official correspondence which is eligible for submission by facsimile and which pertains to this application may be faxed to 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Questions about the Private PAIR system should be directed to the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Mike Stahl MSS
Patent Examiner
Art Unit 2874

September 3, 2006



Rodney Bovernick
Supervisory Patent Examiner
Technology Center 2800